

**REVIEW OF ALTERNATIVE SUMMONING PLAN
SUBMITTED TO THE SUPREME COURT OF ARIZONA ON MARCH 19, 2008
BY THE SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY**

Introduction

The Supreme Court of Arizona and its Administrative Office of the Courts has requested that the National Center for State Courts (NCSC) provide independent, expert advice on whether any plan for alternative juror summoning procedures, or modifications to a plan, provides for the summoning of jurors from a fair cross section of the community; satisfies the requirements of the constitutions of the United States and Arizona; and complies with federal and Arizona law. Included in the scope of services to be performed by the NCSC is a review of supporting documentation for the alternative summoning plan, including information concerning the anticipated number of jury trials conducted at each court location, the basis for any demographic assumptions about the resulting jury pool, historical information about juror yields at each local, and precise geographic boundaries for each court location.

On March 14, 2008, the Superior Court of Arizona, Maricopa County, submitted for approval its Plan for Alternative Juror Summoning Procedures (Maricopa PWS System). That plan, which proposes to reimplement the Proximity Weighted Summoning (PWS) System that was in effect at the Superior Court until August 14, 2006. The Maricopa Plan was subsequently forwarded to Paula L. Hannaford-Agor and G. Thomas Munsterman of the NCSC Center for Jury Studies for their review and assessment.

Ms. Hannaford-Agor and Mr. Munsterman reviewed the Maricopa Plan, which included the evaluation report previously conducted by the NCSC in response to a 2006 legal challenge (NCSC Final Report) and public comments from key stakeholders in the Maricopa County jury selection system. The Maricopa Plan did not specifically document the anticipated number of jury trials to be held in each location annually, the basis for demographic assumptions about the resulting jury pool, historical information on juror yields at each court location, or the precise geographic boundaries to be served at each location. These items were discussed in the NCSC Final Report, however, and for the purpose of this review, the NCSC assumes that these have not changed.

The NCSC also reviewed legal requirements concerning jury selection as set forth in the U.S. Constitution; the Arizona Constitution; Arizona Revised Statutes, and the Arizona Code of Court Administration. They paid particular attention to the Sixth and Fourteen Amendments to the U.S. Constitution concerning fair cross section and equal protection requirements, respectively; Article 6, Section 17 of the Arizona Constitution requiring that trial jurors be drawn and summoned from the body of the county; and Title 21 of the Arizona Revised Statutes, specifying jury selection and summoning requirements.

The Maricopa PWS System

In its Plan, the Superior Court of Arizona, Maricopa County, proposes to reimplement the PWS System that was in effect from 2004 through August 14, 2006 when the Superior Court reverted to a countywide summoning system following a series of legal challenges to the PWS System. In April 2006, the challenges were consolidated and assigned to

Judge William J. O’Neil to determine whether the PWS System complies with A.R.S. §§ 21-312-313. In an order released on October 23, 2007, Judge O’Neil ruled that the PWS System did comply with the statutory requirements that jurors be randomly selected from the master jury list.

The PWS System was designed to accomplish three primary objectives simultaneously: (1) to ensure that trial jurors for Superior Court are randomly selected from the master jury list; (2) to ensure that the demographic characteristics of the jury pool in each of the four Superior Court locations mirrors the countywide demographics; and (3) to minimize the likelihood that a citizen will be summonsed to jury service in a court location more remote from his or her residence than other locations. As the NCSC Final Report noted, one consequence of attempting to accomplish all three objectives simultaneously is that a change to improve performance on any one of the objectives necessarily affects one or both of the other two. For example, an adjustment to the PWS System so that the demographic characteristics at one or more of the court locations more closely mirror the countywide demographic characteristics would necessarily increase the proportion of jurors serving in locations remote from their residence. How well the PWS System accomplishes these three objectives while complying with applicable federal and Arizona law is discussed below.

The PWS System also provides a great deal of discretion to the Jury Commissioner to modify specific details of the System in response to changing institutional, social, and demographic conditions with the Superior Court and Maricopa County. For example, the Jury Commission has the discretion under the PWS System to define the geographic boundaries of the PWS System Zones. The Jury Commissioner also has the discretion to adjust the summoning matrix, which defines the proportion of jurors from each Zone that is summonsed to each court location, as needed to maintain demographic representation of the jury pool at each location. The Maricopa Plan indicates that the Superior Court will engage in a periodic review of the system to ensure that it continues to function at optimal levels, particularly with respect to fair cross section considerations.

Objective 1: Jurors are randomly selected from the countywide master jury list

There is minor variation in the probability of selection across PWS Zones as a result of differences in the demand for jurors at each location. Yet it is clear that all citizens on the countywide master jury are eligible for summoning to all locations, as required by Article 6, Section 17 of the Arizona Constitution. Furthermore, Judge O’Neil ruled that the PWS System that was in place until August 14, 2006 complied with the provisions of A.R.S. 21-212 and 213 concerning the random selection of jurors from the master jury list. *See In re the Matter of the Jury Selection Process in Maricopa County (CV 2006-012150, Oct. 25, 2007)* (defining the requirement of “random” selection in A.R.S. 21-312 as “a substantially equal opportunity for a name to draw”).

Objective 2: The demographic characteristics of the jury pool at each court location mirrors the countywide demographic characteristics.

Under the PWS System in place through August 14, 2006, there was also some variation in the demographic characteristics of the jury pool at each court location, but these were all within tolerable thresholds for absolute and comparative disparity under current federal and Arizona law. *See State v. Gretzler, 612 P. 2d 1012, 1040 (Ariz. 1980)* (absolute disparity of 11% may, in appropriate cases, be sufficient to establish a *prima*

facie violation of the fair cross section requirement) and *State v. Sanderson*, 898 P. 2d 483, n. 2 (Ariz. App. 1995) (comparative disparity well below 50% is unlikely to be sufficient to establish under-representation, especially if the absolute disparity is also small).¹ One of the public comments submitted to the Superior Court suggested that the PWS System does not result in a fair cross section of the community with respect to socioeconomic status. Current Arizona law does not recognize socioeconomic class as a “distinct” or “cognizable” group for the purpose of fair cross section jurisprudence, nor has any other state or federal court.

Objective 3: Citizens are more likely to be summonsed to a court location that is geographically closer to their residence than to a more remote location.

Finally, in terms of improved citizen convenience, the Superior Court predicts that the PWS System will save \$388,000 to \$485,000 annually in mileage costs, which reflects a significant decrease (approximately 872,000 to 1,090,000 miles) in the distance that citizens would travel for jury service. A.R.S. 21-302(E) was specifically enacted to permit a Superior Court with multiple locations within a county to develop an alternative summoning procedure that minimizes jurors’ travel distances and avoids unnecessary travel expenses.

Overall Assessment and Recommendations

Assuming that the Superior Court implements the PWS System exactly as it was before its suspension in August 2006, the NCSC is of the opinion that it does provide for the summoning of jurors from a fair cross section of the community and complies with existing federal and Arizona constitutional and statutory requirements. Indeed, as the NCSC Final Report noted, the PWS System “is an ambitious program and ... one that achieves [its] goals admirably well.”

The NCSC does recommend that the Superior Court develop an explicit schedule for reviewing and implementing any modifications to the PWS System that might be necessary to maintain its optimal performance with respect to fair cross section considerations and random selection across PWS zones. The NCSC specifically recommends that the Superior Court:

1. Review at least annually the Zip Codes assigned to each PWS Zone to reflect changes implemented by the U.S. Postal Service as well as any relevant traffic flow considerations (e.g., the construction of new roadways that might reduce the distance from a Zip Code to the various court locations). It would also be helpful for the Superior Court to develop objective criteria for determining the Zip Code-PWS System Zone allocation (e.g., shortest distance from the geographic center of the Zip Code to the court location, shortest traveling distance from the geographic center of the geographic center of the Zip Code to the court location, etc.).

¹ The Superior Court did not report the demographic characteristics of the jury pool at these locations since it reverted to the countywide summoning system; however, the NCSC would predict that jury pool representation under the PWS System would be at least as good as that under a countywide summoning system as a result of the improved jury yield at each location due to improved citizen convenience.

2. Review at least quarterly the demographic characteristics of the jury pool at each location and make adjustments to the summoning matrix necessary to maintain optimal demographic representation based on race, ethnicity, and gender; and
3. Review at least quarterly the demand for jurors by each court location and make adjustments as necessary to equalize to the greatest extent possible the probability of selection across PWS Zones.

Respectfully submitted,

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